

REMARKS

Claims 18 to 26 are added, and claims 1 and 4 to 26 are therefore now pending in the present application.

It is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicant thanks the Examiner for acknowledging the claim for foreign priority and for indicating that all certified copies of the priority documents have been received.

Applicants thank the Examiner for indicating that claims 3 and 4 contain allowable subject matter. While the objections may not be agreed with, to facilitate matters, claim 1 has been rewritten to include the features of claims 2 and 3, which now depend from claim 4. Claim 4 has been rewritten to include the features of original claim 1. Claims 1 and 4 are therefore allowable, as are their respective dependent claims. It is therefore respectfully requested that the objections be withdrawn.

Claims 1, 2 and 5 to 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Published Patent Application No. 2002/0026249 (which issued as U.S. Patent No. 6,745,089) (“Rasmussen”).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (*See* M.P.E.P. § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law

make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

While the rejections may not be agreed with, to facilitate matters, claim 1 has been rewritten to include the features of claims 2 and 3, which now depend from claim 4. Claim 4 has been rewritten to include the features of original claim 1. Claims 1 and 4 are therefore allowable, as are their respective dependent claims.

Also, claims 14 and 16 have been rewritten to include the features of claims 2 and 3, and they are therefore allowable for essentially the same reasons as claim 1, as presented, as are their respective dependent claims 15 and 17.

It is therefore respectfully requested that the rejections be withdrawn.

Claims 18 to 26 do not add any new matter and are supported by the present application, including the specification. Claims 18 to 26 correspond to claims 5 to 13, except that they depend from allowable claim 4 -- and not claim 1, and they are therefore allowable for the same reasons as claim 4, as presented, from which they depend.

In summary, all of pending claims 1 to 26 are allowable.

CONCLUSION

In view of the foregoing, it is respectfully submitted that all pending and considered claims 1 to 26 are in condition for allowance. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Since all issues raised by the Examiner have been addressed, an early and favorable action on the merits is respectfully requested.

Respectfully submitted,
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